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M E M O R A N D U M

CHAM 4/15/98

TO: Clifford W. Hall
State Controller

APPROVED ~~DISAPPROVED~~

THRU: Nanci Kadlecek
State Purchasing Director

FROM: C. Richard Pennington
Assistant Attorney General

RE: Waiver of State Fiscal Rules
Use of Purchase Orders to Order Services from State Price Agreements

1. As we have discussed previously, I have been working with the Division of Purchasing in developing general terms and conditions that, if included in State price agreements for services, would permit orders to be placed by purchase order. The attached general terms and conditions have been approved by the Division of Purchasing. The Division of Purchasing requests that you approve a waiver of Fiscal Rule 3-1 to permit use of purchase orders to order services from State price agreements (regardless of value of services) where the attached general terms and conditions are incorporated in the price agreement with the vendor.

2. As the Division of Purchasing previously indicated, some of these price agreements are multiyear awards that were just awarded within the past year. Consequently, the implementation may be phased for some vendors currently on the price agreements.

a. The Division of Purchasing intends to encourage each vendor to agree to incorporation of the terms and conditions as part of the annual renewal this Spring. They will send a cover letter that explains the reasons for the modification: that agencies will be informed that they can use purchase orders to order services (regardless of purchase order value) from

vendors who have agreed to incorporation of the general terms and conditions. Informal vendor responses so far have been favorable.

b. As vendors execute the amended terms and conditions, the computerized State price agreement summaries will be modified electronically to notify agencies about which vendors are within the scope of this waiver. Vendors who have not agreed to incorporation of the general terms and conditions will not be within the scope of the waiver.

c. New awards of price agreements for services will include these general terms and conditions.

3. Approval of this waiver does not affect the requirement that agencies and institutions obtain privatization review by the Department of Personnel. Agencies and institutions without approved program waivers will still have to receive approval from the Department of Personnel for personal services orders not otherwise exempt.

4. The general terms and conditions are intended to govern the administration/performance of the price agreement itself, as well as the administration/performance of orders placed against the price agreement.

a. Some of the terms and conditions of the price agreement can only be modified with the agreement of the Division of Purchasing. However, agencies and institutions (known as “ordering entities” in the price agreement) can modify the operation of some standard clauses. As a result, purchase orders will be governed by a comprehensive set of terms and conditions where the order is otherwise silent.

b. The general terms and conditions now specifically will permit orders to be placed prior to the expiration of price agreements where the orders have a delivery date or period of performance up to 120 days past the then-current expiration date of the price agreement. This is intended to address the recurring questions concerning the permitted performance period when current price agreement terms are due to expire.

c. The general terms and conditions also clarify what rates will govern when prices change. In work priced as guaranteed not-to-exceed or firm fixed price, rates at the time of the order will govern. In work paid on an hourly rate, the current rates at the time of performance will govern.

d. The Colorado Special Provisions govern orders placed by State agencies and institutions. Paragraph 1 of the Special Provisions has been clarified by stating that “State Controller or designee approval is not required for State purchase orders issued against the State price agreement by State purchasing agents.”

5. Agencies and institutions have the authority to agree to contractually modify the following general terms and conditions:

a. Periodic payments during project completion (default is monthly during progress, at rate current at time of service for hourly reimbursement contracts, and rate current at time of order for firm, fixed price agreements).

b. Reimbursement terms for travel, lodging, and per diem (default is use of State rates for travel, lodging, and per diem);

c. Late payment provisions (default is use of the 45 day late payment rule specified in CRS 24-30-202(24));

d. Procedures for approval and placement of personnel provided by the vendor under the agreement (default grants the ordering entity a right to interview and approve the assignment, as well as a right to request replacement);

e. Risk of loss to government-provided property or facilities (default is contractor assumption of risk of loss or damage to government furnished property or facilities using clause based on the model in Chapter 6, *Colorado Contract Procedures and Management Manual*);

f. Inspection and acceptance rights and remedies (default is based on the model clause in Chapter 6, *Colorado Contract Procedures and Management Manual*);

g. Rights in Data, Documents, and Computer Software (default is ownership by the ordering entity, with the clause adapted from the model clause in Chapter 6, *Colorado Contract Procedures and Management Manual*);

h. Data and Document Deliverables (default is adapted version of the model clause in Chapter 6, *Colorado Contract Procedures and Management Manual*);

i. Year 2000 Warranty (default is a slightly adapted version of the recently published Year 2000 warranty clause);

j. Remedies for default/defective performance (default clause is based on the model clause in Chapter 6, *Colorado Contract Procedures and Management Manual*);

k. Termination for Convenience of the Order (default is no-cost termination by ordering entity with 60 days notice);

l. Termination for Default of the Order (default is 10 day notice procedure).

6. If this request for waiver is approved, please indicate “approved” with your signature at the top of this memorandum.

Enclosure

State Price Agreement General Terms and Conditions